

§ 224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?

If the tribe wishes to proceed with the application, the tribe must submit a final proposed TERA to the Director within 45 days following the date of the Tribe's receipt of the Director's report on the application consultation meeting.

§ 224.62 May a final proposed TERA differ from the original proposed TERA?

The final proposed TERA may or may not contain provisions that differ from the original proposed TERA submitted with the application.

(a) If a final proposed TERA does not differ significantly or materially from the original TERA contained in the complete application, the 270-day review period will begin to run on the date the original complete application was received (under § 224.57(c)) or on the date established by operation of § 224.57(d)).

(b) If a final proposed TERA differs significantly or materially from the original TERA contained in the complete application, the Secretary, with the tribe's consent, may extend the 270-day period for a reasonable time. The Secretary will notify the tribe in writing if an extension of time is necessary.

TERA REQUIREMENTS

§ 224.63 What provisions must a TERA contain?

A TERA must contain all the elements required by this section.

(a) A provision for the Secretary's periodic review and evaluation of the tribe's performance under a TERA.

(b) A provision that recognizes the authority of the Secretary, upon a finding of imminent jeopardy to a physical trust asset, to take actions the Secretary determines to be necessary to protect the asset, including reassumption under subparts F and G of this part.

(c) A provision under which the tribe establishes and ensures compliance with an environmental review process for leases, business agreements, and rights-of-way which, at a minimum:

(1) Identifies and evaluates all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources, arising from a lease, business agreement, or right-of-way;

(2) Identifies proposed mitigation measures, if any, and incorporates appropriate mitigation measures into the lease, business agreement, or right-of-way;

(3) Informs the public and provides opportunity for public comment on the environmental impacts of the approval of the lease, business agreement or right-of-way;

(4) Provides for tribal responses to relevant and substantive public comments before tribal approval of the lease, business agreement or right-of-way;

(5) Provides for sufficient tribal administrative support and technical capability to carry out the environmental review process; and

(6) Develops adequate tribal oversight of energy resource development activities under any lease, business agreement or right-of-way under a TERA that any other party conducts to determine whether the activities comply with the TERA and applicable Federal and tribal environmental laws.

(d) Provisions that require, with respect to any lease, business agreement, or right-of-way approved under a TERA, all of the following:

(1) Mechanisms for obtaining corporate, technical, and financial qualifications of a third party that has applied to enter into a lease, business agreement, or right-of-way;

(2) Express limitations on duration that meet the restrictions of the Act and this Part under § 224.86;

(3) Mechanisms for amendment, transfer, and renewal;

(4) Mechanisms for obtaining, reporting and evaluating the economic return to the tribe;

(5) Mechanisms for securing technical information about activities and ensuring that technical activities are performed in compliance with terms and conditions;

(6) Assurances of the tribe's compliance with all applicable environmental laws;

(7) Requirements that the lessee, operator, or right-of-way grantee will comply with all applicable environmental laws;

(8) Identification of tribal representatives with the authority to approve a lease, business agreement, or right-of-way and the related energy development activities that would occur under a lease, business agreement, or right-of-way;

(9) Public notification that a lease, business agreement, or right-of-way has received final tribal approval;

(10) A process for consultation with affected States regarding off-reservation impacts, if any, identified under paragraph (c) of this section;

(11) A description of remedies for breach;

(12) A statement that any provision that violates an express term or requirement of the TERA is null and void;

(13) A statement that if the Secretary determines that any provision that violates an express term or requirement of the TERA is material, the Secretary may suspend or rescind the lease, business agreement, or right-of-way, or take any action the Secretary determines to be in the best interest of the tribe, including, with the consent of the parties, revising the nonconforming provisions so that they conform to the intent of the applicable portion of the TERA; and

(14) A statement that the lease, business agreement, or right-of-way subject to a TERA, unless otherwise provided, goes into effect when the tribe delivers executed copies of the lease, business agreement, or right-of-way to the Director by first class mail return receipt requested or express delivery. The parties to a lease, business agreement, or right-of-way may agree in writing that any provision of their contract may have retroactive application.

(e) Citations to any applicable tribal laws, regulations, or procedures that:

(1) Provide opportunity for the public to comment on and to participate in public hearings, if any, under paragraph (c)(2) of this section; and

(2) Provide remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E of this part.

(f) Provisions that require a tribe to provide the Secretary with citations to any tribal laws, regulations, or procedures the tribe adopts after the effective date of a TERA that establish, amend, or supplement tribal remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E of this part.

(g) Provisions that designate a person or entity, together with contact information, authorized by the tribe to maintain and disseminate to requesting members of the public current copies of tribal laws, regulations, or procedures that establish or describe tribal remedies that petitioning parties must exhaust before instituting appeals under subpart E of this part.

(h) Identification of financial assistance, if any, that the Secretary has agreed to provide to the tribe to assist in implementation of the TERA, including the tribe's environmental review of individual energy development activities.

(i) Provisions that require a tribe to notify the Secretary and the Director in writing, as soon as practicable after the tribe receives notice, of a violation or breach as defined in this Part.

(j) Provisions that require the tribe and the tribe's financial experts to adhere to Government auditing standards and to applicable continuing professional education requirements.

(k) Provisions that require the tribe to submit to the Director information and documentation of payments made directly to the tribe, if any. These provisions enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and protect the rights of the tribe under, a lease, business agreement, or right-of-way. Required documentation must include documents evidencing proof of payment such as cancelled checks; cash receipt vouchers; copies of money orders or cashiers checks; or verification of electronic payments.

(l) Provisions that ensure the creation, maintenance and preservation of records related to leases, business agreements, or rights-of-way and performance of activities a tribe assumed under a TERA sufficient to facilitate the Secretary's periodic review of the TERA. The Secretary will use these

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records as part of the periodic review and evaluation process under § 224.132. Approved Departmental records retention procedures under the Federal Records Act (44 U.S.C. Chapters 29, 31, and 33) provide a framework the tribe may use to ensure that its records under a TERA adequately document essential transactions, furnish information necessary to protect its legal and financial rights, and enable the Secretary to discharge the trust responsibility if:

(1) Any other party violates the terms of any lease, business agreement, or right-of-way; or

(2) Any provision of a lease, business agreement or right-of-way violates the TERA.

§ 224.64 How may a tribe assume management of development of different types of energy resources?

In order for a tribe to assume authority for approving leases, business agreements, and rights-of-way for development of another energy resource that is not included in the TERA, a tribe must apply for a new TERA covering the authority for the development of another energy resource it wishes to assume. The Secretary's consideration of a new TERA will include a determination of the tribe's capacity to develop that type of energy resource and will trigger the public notice and opportunity for comment consistent with § 224.67.

§ 224.65 How may a tribe assume additional activities under a TERA?

A tribe may assume additional activities related to the development of the same type of energy resource included in a TERA by negotiating with the Secretary an amendment to the existing TERA to include the additional activities. The Secretary will determine in each case whether the tribe has sufficient capacity to carry out additional activities the tribe may wish to assume under an approved TERA.

§ 224.66 How may a tribe reduce the scope of the TERA?

A tribe may reduce the scope of the TERA by negotiating with the Secretary an amendment to the existing TERA to eliminate an activity as-

sumed under the TERA or a type of energy resource development managed under the TERA. Any such reduction in scope must include the return of all relevant Departmental resources transferred under the TERA and any relevant records and documents.

PUBLIC NOTIFICATION AND COMMENT

§ 224.67 What must the Secretary do upon the Director's receipt of a final proposed TERA?

(a) Within 10 days of the Director's receipt of a final proposed TERA, the Secretary must submit a notice for publication in the FEDERAL REGISTER advising the public:

(1) That the Secretary is considering a final proposed TERA for approval or disapproval; and

(2) Of any National Environmental Policy Act (NEPA) review the Secretary is conducting.

(b) The FEDERAL REGISTER notice will:

(1) Contain information advising the public how to request and receive copies of or participate in any NEPA reviews, as prescribed in subpart C of this part, related to approval of the final proposed TERA; and

(2) Contain information advising the public how to comment on a final proposed TERA.

§ 224.68 How will the Secretary use public comments?

(a) The Secretary will review and consider public comments in deciding to approve or disapprove the final proposed TERA; and

(b) The Secretary will provide copies of the comments to the Designated Tribal Official;

(c) Upon mutual agreement between the tribe and the Secretary, the tribe may make changes in the final proposed TERA based on the comments received; and

(d) If the tribe revises the final proposed TERA based on public comments, the tribal governing body must approve the changes, the authorized representative of the tribe must sign the final proposed TERA as revised, and the tribe must send the revised final proposed TERA to the Director. The Secretary and the tribe will consult on